

**SALE AND DEVELOPMENT AGREEMENT:
FORMER PORT NORFOLK ELEMENTARY SCHOOL PROPERTY**

This SALE AND DEVELOPMENT AGREEMENT between THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF PORTSMOUTH, VIRGINIA, a political subdivision of the Commonwealth of Virginia (herein Seller) and HULL'S CREEK PROPERTIES, LLC, a Virginia limited liability company (herein Purchaser), provides as follows:

RECITALS

A. Seller owns a former elementary school site, commonly known as Port Norfolk Elementary School, located on Detroit Avenue in the Port Norfolk area of the City of Portsmouth (the Property), as described in the survey attached hereto as Exhibit A-1 and the title report attached hereto as Exhibit A-2. Seller exists for the purpose of acquiring and causing the development of real property in the public interest, including enhancement of the tax base, and on behalf of the City of Portsmouth. It acquired the Property from the City of Portsmouth, Virginia pursuant to a Cooperation Agreement of even date herewith.

B. Pursuant to the Cooperation Agreement, Seller has the responsibility and duty to cause the Property to be developed in a way that benefits community quality and is in the public interest.

C. Purchaser is a development entity in which the principals are Franciscus Homes and Coastal Virginia Developers. Purchaser desires to develop the property in accordance with the Seller's goals, as set forth in the preceding section. The intended development would be as a residential subdivision consisting of no more than 23 single-family residences.

D. By this instrument, Seller and Purchaser set forth the terms by which Purchaser will purchase the property from Seller and develop it for said mutually agreed purpose.

In exchange for the mutual consideration recited herein, the parties do hereby agree as follows:

AGREEMENT

1. Price; Deposit. Seller shall sell to Purchaser, and Purchaser shall buy from Seller, the Property. The price shall be \$237,257 all cash or equivalent paid at closing. With this instrument, Purchaser makes a deposit in the amount of \$25,000, the receipt of which is acknowledged by Seller. The deposit shall be held in escrow by Independent Trustees, Inc, a Virginia corporation and an affiliate of Pioneer Virginia Title Company (the Escrow Agent) pending closing. At closing, it shall be applied in full to the purchase price.

The Purchaser and Seller both acknowledge that, with acquisition of a portion of Lot 143 of the Subdivision of Lake Shores owned by others, additional lots could be created as a part of this project. Purchaser agrees that, if within 3 years from the closing date, it acquires the additional property, Purchaser will pay the Seller \$10,000 for each additional lot created that includes a portion of the Property.

2. Closing date and Special Conditions of Closing. Closing shall occur not later than 90 days after approvals listed in Paragraph 2.B. If closing does not occur by that date, and if the parties have not agreed in writing to an extension of time, then either party shall have the right to terminate this agreement by written notice delivered to the other party. Upon termination, the deposit shall be returned in full to Purchaser. The following Special Conditions shall be met prior to closing:

A. Purchaser shall provide proof of initial financing that is reasonably acceptable to Seller. The initial financing shall be either an irrevocable commitment from a regulated lending institution or financial records indicating cash is available to Purchaser in an amount sufficient to ensure construction of the Project Infrastructure and Phase I, as described in Exhibits B and C below. The final Project Infrastructure shall be as shown on the engineering plans approved by the City of Portsmouth, and the approved Project Infrastructure shall be deemed a part of Exhibit B, as if included therein.

B. Purchaser shall diligently pursue obtaining all required official approvals from the City of Portsmouth and other governmental entities and agencies, as applicable, including by way of example and without limitation zoning, major subdivision, building plans, Chesapeake Bay regulations, and site plan (to include flooding considerations), and such approvals shall be obtained prior to closing, such that the Project shall be eligible for immediate issuance of a building permit or permits, upon application by Purchaser.

3. General conditions of conveyance.

A. Seller shall convey marketable and insurable title to the Property by special warranty deed, subject to any easements, covenants and restrictions of record, which do not adversely affect the use of the Property for the desired residential purposes. Purchaser acknowledges the presence of major storm water conduits on the property, which will require an easement running to the City of Portsmouth of sufficient size to permit unobstructed service and maintenance. Once site plan approval is given to Purchaser and the location of the storm water conduits or pipe(s) is known and approved by the City Engineer and any rework of the storm system has been performed, the Purchaser shall

execute a deed of easement to the City of Portsmouth prior to issuance of building permits Phase I units. The deed of easement shall be prepared by the City of Portsmouth and shall contain language conveying an easement or easement(s) of the size indicated on the approved engineering plans. Once this deed of easement is delivered to the City, the City shall bear all costs and responsibility for recordation in the public land records.

Title to the Property shall be conveyed (i) free and clear of all liens, tenancies and encumbrances of every kind except those stated in this instrument, (ii) with marketable and insurable title; (iii) with access to a public road; and (iv) free of all possible tenancies and occupancies.

B. Closing shall be at the office of the Escrow Agent.

C. Closing shall be conducted in accordance with established practices and procedures for Virginia real estate closings of this type, generally consistent with closing regulations promulgated by the Virginia State Bar, to the extent applicable.

D. Purchaser has had full and adequate opportunity to inspect the Property for environmental, soil, and subsurface conditions, has in fact made such inspections to its satisfaction, and accepts the property from Seller in as is condition.

4. Plan of Development; Phases. Purchaser shall develop the Property only as set forth in the Plan of Development, as follows:

A. The Property shall be developed as a residential subdivision consisting of single-family residences. There shall be no more than 23 residential units on the Property once it is fully developed. No residence shall be smaller than 1,400 square feet of usable interior floor space, and no more than three residential units of 1,400 square feet shall be

constructed in the subdivision. No lot containing a residential unit of an approved design shall adjoin or face another lot containing a residential unit of the same elevations and building materials.

B. A portion of the Property, the "Open Area," consisting of a tidal wetland, forested uplands, or a combination of both, shall be designated and preserved as a conservation easement granted and recorded by Purchaser. Developer, its successors or assigns, shall be responsible for all maintenance of the open area.

C. The Property shall be developed pursuant to the Site Plan, which is attached hereto as Exhibit B. Development shall be commenced not later than 60 days after closing and completed not later than 180 days after closing. Purchaser reserves the right to begin construction prior to closing subject to agreement by the Seller. Construction of the Project Infrastructure, as shown on Exhibit C, shall be commenced not later than 60 days after closing and completed not later than 180 days after closing. Seller acknowledges that the tidal wetlands will not be constructed until after the lots have been legally subdivided and created and may occur after the 180 day time period.

(1) Should Purchaser fail to commence infrastructure construction by the required date, Seller shall have the right to repurchase the Property for the original purchase price.

(2) Should Purchaser fail to complete infrastructure by the required date, Seller shall have the right to repurchase the Property for the original purchase price as increased by the actual and reasonable cost of infrastructure Purchaser has constructed on the Property. If the parties cannot agree on the repurchase price,

they shall select a mutually acceptable arbitrator who has expertise in the area of construction costs, shall equally divide the cost of arbitration, and shall be bound by the decision of the arbitrator. Neither party shall unreasonably withhold consent to arbitration.

D. The deadlines set forth in this section may be extended in the event of *force majeure*.

E. The Property shall be developed in Phases, as described and scheduled in Exhibit C, which is attached hereto. Building permits for Phase I shall be obtained not later than 180 days after closing. If they are not obtained by the required date, Seller shall have a right of repurchase as set forth in Sections 4(C)(1) (no infrastructure constructed) or 4(C)(2) (infrastructure uncompleted) above, as applicable.

F. Elevations of the structures to be constructed shall be as set forth in the Architectural Guidelines (Exhibit D) and include the conditions proffered in Purchaser's letter dated November 15, 2010 contained in Exhibit D.

G. Seller's repurchase rights under subparagraphs C(1) and C(2) above shall be embodied in a recorded easement, a copy of which is attached hereto as Exhibit E. Seller shall release or subordinate said easement if and when reasonably necessary for Purchaser to obtain secured financing to enable Purchaser to meet the required development schedules, provided Seller retains commercially reasonable assurances that the required completion dates shall be honored.

H. Purchaser will construct an inline floodgate valve at the connection of the existing storm drainage pipe to the drainage system within the Detroit Street right-of-way.

Purchaser shall identify the location, design, and type of floodgate which shall not be

installed unless reviewed and approved by the City of Portsmouth Department of Engineering.

I. Purchaser shall simultaneously submit to the City of Portsmouth Department of Planning for review and approval the planned improvements and lot and street configuration for the Property and for any other parcels of land that will comprise Purchaser's proposed project. The Purchaser shall submit the entire proposed project for such review as a single subdivision project subject to the City's requirements for a major subdivision.

J. Purchaser shall submit to the City's Historic Preservation Commission its exterior designs for any new home to be constructed in the Port Norfolk Historic District. Approval of the designs shall be obtained and a copy of the approval and the approved designs delivered to Seller prior to construction. The approved designs shall be deemed a part of Exhibit D, "Elevations", as if included therein.

5. General conditions.

A. Time is of the essence with respect to all dates, timelines and deadlines set forth in this Agreement.

B. This Agreement is a Virginia contract. It shall be interpreted and applied consistently with the laws of the Commonwealth of Virginia.

C. The singular shall include the plural, and vice versa, unless otherwise indicated by context.

D. Neither party shall be deemed to be the drafter of this Agreement, and it shall be interpreted neutrally, and not with a presumption in favor of, or otherwise in favor of, either

party.

E. This Agreement reflects the complete agreement between the parties on the subject matter contained herein. Any possible prior oral or written agreements are hereby superceded. It may be modified only by written instrument signed by authorized representatives of the parties. It creates no rights in any third party.

F. The obligations on Purchaser set forth in Section 4 (Plan of Development; Phases), and any other provision not satisfied by closing shall survive closing. Seller shall have the right to enforce said obligations by equitable relief.

G. This Agreement may not be assigned by Purchaser without the written consent of Seller.

H. Seller shall allow Purchaser reasonable access to the Property prior to closing to enable Purchaser to comply with all pre-closing requirements.

I. Any notices made pursuant to this Agreement shall be provided to the following persons and addresses:

NOTICES TO SELLER:

Economic Development Authority of the City of Portsmouth, Virginia
c/o Director of Economic Development
200 High Street, Suite 200
Portsmouth, Virginia 23704

Copy to:

City of Portsmouth
c/o Portsmouth City Manager
City Hall, 801 Crawford Street
Portsmouth, Virginia 23704

NOTICES TO PURCHASER:

Coastal Virginia Developers, LLC
c/o Bob G. Arnette
Post Office Box 756
Suffolk, Virginia 23439

Franciscus Homes, Inc.
c/o Frank Spadea
616 Village Drive, Suite G
Virginia Beach, Virginia 23454

WITNESS the following signatures this _____ day of _____, 2011:

**ECONOMIC DEVELOPMENT AUTHORITY OF
THE CITY OF PORTSMOUTH, VIRGINIA**

By _____
Name: C.W. "Luke" McCoy
Title: Chairman

HULL'S CREEK PROPERTIES, LLC

By _____
Name: Bob G. Arnette
Title: Member

SCHEDULE OF EXHIBITS

Exhibit A-1 Survey
Exhibit A-2 Title Report
Exhibit B Site Plan
Exhibit C Phases of Development and Schedule
Exhibit D Architectural Guidelines
Exhibit E Easement for Repurchase Rights